

ASSEMBLY BILL

No. 515

Introduced by Assembly Member Dickinson

February 20, 2013

An act to amend Section 38 of, and to add Chapter 5.2 (commencing with Section 101) to Title 1 of Part 1 of, the Code of Civil Procedure, and to amend Sections 21167.1, 21167.9, and 21168.9 of, and to add Sections 21060.2 and 21167.15 to, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 515, as introduced, Dickinson. Environmental quality: California Environmental Quality Act: judicial review.

The California Constitution vests the judicial power of the state in the Supreme Court, the courts of appeal, and the superior courts. Existing law establishes a superior court of one or more judges in each county and provides that the superior courts have original jurisdiction, except as provided in the Constitution. Existing law requires the presiding judge of each superior court to distribute the business of the court among the judges, and to prescribe the order of business, subject to the rules of the Judicial Council.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would

avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA establishes a judicial review of determinations made by a public agency pursuant to CEQA and requires actions or proceedings brought pursuant to CEQA to be given preference over all other civil actions by a trial court. Existing law requires the superior courts in all counties with a population of more than 200,000 to designate one or more judges to develop expertise in CEQA and related land use and environmental laws, so that those judges will be available to hear, and quickly resolve, actions or proceedings brought pursuant to CEQA. If the court finds that a determination made by a public agency pursuant to CEQA violates the requirements of CEQA, CEQA requires the court to issue an order, in the form of a peremptory writ of mandate, specifying what action by the public agency is necessary to comply with CEQA.

This bill would provide for at least 2 CEQA compliance court districts within the state, with the appropriate boundaries for the districts and locations for seating CEQA compliance courts to be determined by rule of court. The bill would establish a CEQA compliance court in every district, consisting of at least 3 judges. The bill would require the Governor to appoint judges to the CEQA compliance court based upon their expertise in CEQA and related land use and environmental laws, so that those judges will be able to hear and quickly resolve those actions or proceedings. The bill would require the Chief Justice of California to designate one of the judges of each CEQA compliance court district as the presiding judge of that district. The bill would give the CEQA compliance court jurisdiction over actions or proceedings involving CEQA, as well as joined matters involving related land use and environmental laws. The bill would provide that decisions of the CEQA compliance court may be appealed only to the Supreme Court. The bill would require the CEQA compliance court to issue a preliminary decision before the opportunity for oral argument is granted. If the CEQA compliance court finds that a determination of a public agency violated CEQA, the bill would require that the court order specify what action taken by the public agency was in error.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 38 of the Code of Civil Procedure is amended to read:

38. Unless the provision or context otherwise requires, a reference in a statute to a judicial district means:

(a) As it relates to a court of appeal, the court of appeal district.

(b) As it relates to a superior court, the county.

~~(c) As it relates to a municipal court, the municipal court district.~~

~~(d) As it relates to a county in which there is no municipal court, the county.~~

(c) As it relates to a CEQA compliance court, the CEQA court district.

SEC. 2. Chapter 5.2 (commencing with Section 101) is added to Title 1 of Part 1 of the Code of Civil Procedure, to read:

CHAPTER 5.2. ENVIRONMENTAL COURT

101. For the purposes of this chapter, “CEQA” means the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

102. (a) There shall be at least two CEQA compliance court districts within the state. The appropriate boundaries for the districts and locations for seating CEQA compliance courts shall be determined by rule of court.

(b) In every district there is a CEQA compliance court, which shall consist of at least three judges. The Governor shall appoint judges to the CEQA compliance court based upon their expertise in CEQA and related land use and environmental laws, so that those judges will be able to hear and quickly resolve those actions or proceedings. The Chief Justice of California shall designate one of the judges of each CEQA compliance court district as the presiding judge of that district.

103. (a) In each district, no more than three judges shall participate in a hearing or decision. The presiding judge of the district shall designate the three judges who shall participate.

(b) The concurrence of two judges of the CEQA court is necessary to render the decision in every case, and to transact any other business except business that may be done at chambers by the presiding judge of the district. The presiding judge shall also

1 supervise its business and transact any business that may be done
2 at chambers.

3 (c) The CEQA compliance court shall have jurisdiction over
4 actions or proceedings involving CEQA, as well as joined matters
5 involving related land use and environmental laws.

6 (d) Notwithstanding any other law, the decisions of the CEQA
7 compliance court may be appealed only to the Supreme Court.

8 (e) Except as otherwise provided in this article, the law generally
9 applicable to civil actions shall apply to actions subject to this
10 article.

11 104. (a) The presiding judge shall convene the CEQA court
12 when necessary.

13 (b) The CEQA compliance court may transact business at any
14 time. Adjournments from day to day, or from time to time, are to
15 be construed as recesses in the sessions, and shall not prevent the
16 CEQA compliance court from sitting at any time.

17 SEC. 3. Section 21060.2 is added to the Public Resources Code,
18 to read:

19 21060.2. "CEQA compliance court" means the court
20 established pursuant to Chapter 5.2 (commencing with Section
21 101) of Title 1 of Part 1 of the Code of Civil Procedure.

22 SEC. 4. Section 21167.1 of the Public Resources Code is
23 amended to read:

24 21167.1. (a) In all actions or proceedings brought pursuant to
25 Sections 21167, 21168, and 21168.5, including the hearing of an
26 action or proceeding on appeal from a decision of a lower court,
27 all courts in which the action or proceeding is pending shall give
28 the action or proceeding preference over all other civil actions, in
29 the matter of setting the action or proceeding for hearing or trial,
30 and in hearing or trying the action or proceeding, so that the action
31 or proceeding shall be quickly heard and determined. The court
32 shall regulate the briefing schedule so that, to the extent feasible,
33 the court shall commence hearings on an appeal within one year
34 of the date of the filing of the appeal.

35 (b) To ensure that actions or proceedings brought pursuant to
36 Sections 21167, 21168, and 21168.5 may be quickly heard and
37 determined ~~in the lower courts, the superior courts in all counties~~
38 ~~with a population of more than 200,000 shall designate one or~~
39 ~~more judges to develop by judges with expertise in this division~~
40 and related land use and environmental laws, ~~so that those judges~~

1 ~~will be available to hear, and quickly resolve,~~ actions or
2 proceedings brought pursuant to Sections 21167, 21168, and
3 21168.5 ~~shall be heard by the CEQA compliance court.~~

4 (c) In an action or proceeding filed pursuant to this chapter that
5 is joined with any other cause of action, the court, upon a motion
6 by any party, may grant severance of the actions. In determining
7 whether to grant severance, the court shall consider such matters
8 as judicial economy, administrative economy, and prejudice to
9 any party.

10 SEC. 5. Section 21167.9 of the Public Resources Code is
11 amended to read:

12 21167.9. ~~Any~~ *An* action brought in the ~~superior~~ *CEQA*
13 *compliance* court relating to this division may be subject to a
14 mediation proceeding conducted pursuant to Chapter 9.3
15 (commencing with Section 66030) of Division 1 of Title 7 of the
16 Government Code.

17 SEC. 6. Section 21167.15 is added to the Public Resources
18 Code, to read:

19 21167.15. To ensure the efficient use of the court's time and
20 a focused discussion of the issues at oral arguments, the CEQA
21 compliance court shall first issue a preliminary decision before
22 the opportunity for oral argument is granted.

23 SEC. 7. Section 21168.9 of the Public Resources Code is
24 amended to read:

25 21168.9. (a) ~~If a~~ *the CEQA compliance* court finds, as a result
26 of a trial, hearing, or remand from ~~an appellate court~~ *the Supreme*
27 *Court*, that ~~any~~ a determination, finding, or decision of a public
28 agency has been made without compliance with this division, the
29 court shall enter an order that includes one or more of the
30 following:

31 (1) A mandate that the determination, finding, or decision be
32 voided by the public agency, in whole or in part.

33 (2) If the *CEQA compliance* court finds that a specific project
34 activity or activities will prejudice the consideration or
35 implementation of particular mitigation measures or alternatives
36 to the project, a mandate that the public agency and any real parties
37 in interest suspend any or all specific project activity or activities,
38 pursuant to the determination, finding, or decision, that could result
39 in an adverse change or alteration to the physical environment,
40 until the public agency has taken any actions that may be necessary

1 to bring the determination, finding, or decision into compliance
2 with this division.

3 (3) A mandate that the public agency take specific action as
4 may be necessary to bring the determination, finding, or decision
5 into compliance with this division.

6 (b) ~~Any~~ *An* order pursuant to subdivision (a) shall include only
7 those mandates which are necessary to achieve compliance with
8 this division and only those specific project activities in
9 noncompliance with this division. The order shall be made by the
10 issuance of a peremptory writ of mandate specifying what action
11 *was in error and what specific action* by the public agency is
12 necessary to comply with this division. However, the order shall
13 be limited to that portion of a determination, finding, or decision
14 or the specific project activity or activities found to be in
15 noncompliance only if a court finds that (1) the portion or specific
16 project activity or activities are severable, (2) severance will not
17 prejudice complete and full compliance with this division, and (3)
18 the court has not found the remainder of the project to be in
19 noncompliance with this division. ~~The trial~~ *CEQA compliance*
20 court shall retain jurisdiction over the public agency's proceedings
21 by way of a return to the peremptory writ until the court has
22 determined that the public agency has complied with this division.

23 (c) ~~Nothing in this section authorizes a~~ *This section does not*
24 *authorize the CEQA compliance* court to direct ~~any~~ *a* public agency
25 to exercise its discretion in any particular way. Except as expressly
26 provided in this section, ~~nothing in this~~ *this* section is *not* intended
27 to limit the equitable powers of the court.